

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>SafeView, Inc.</b>	)	
	)	
<b>Request for Waiver of Sections 15.31 and</b>	)	<b>ET Docket No. 04-373</b>
<b>15.35 of The Commission's Rules to Permit</b>	)	
<b>the Deployment Of Security Screening</b>	)	
<b>Portal Devices that Operate</b>	)	
<b>In the 24-25-30 GHz Range</b>	)	

**REPLY TO  
OPPOSITION TO PETITION FOR RECONSIDERATION**

FiberTower Corporation ("FiberTower") hereby respectfully submits its Reply to the Opposition to Petition For Reconsideration filed by L3 Communications SafeView, Inc. ("SafeView") on September 15, 2006 (the "Opposition"). The Opposition responds to FiberTower's Petition for Reconsideration ("Petition") of the August 4, 2006 Order in the above-referenced proceeding.<sup>1/</sup>

SafeView's Opposition is premised on its contention that its "waivered device ... should be no more likely to cause harmful interference than a compliant device." Based on that assertion, SafeView argues that: (1) FiberTower has not demonstrated that it will suffer harm from the SafeScout product; (2) it should not be required to conduct special interference testing; (3) it should not be required to rule out alternative, rule compliant alternatives; (4) it need not make a listing of its product locations public; and (5) FiberTower's requests for interference correction are unrealistic.

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<sup>1/</sup> *SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24-25-30 GHz Range, Order, ET Docket No. 04-373, DA 06-1589 (rel. August 4, 2006) ("Order").*

However, SafeView's premise is incorrect. SafeView required a waiver of the regulations because it could not satisfy rules designed to protect, among others, licensed operations like FiberTower's. If, as SafeView appears to now argue, the rules are not necessary to protect against harmful interference, the rules should be changed. However, SafeView has not demonstrated that the rules are too restrictive. Instead, it convinced the Commission to strike a balance between the fact that waived devices may cause interference because they do not comply with the rules and the public benefit that may be recognized through the use of the SafeScout device. FiberTower's Petition is consistent with that approach. Like the FCC, FiberTower recognizes that the rules for which SafeView sought waiver are designed to protect it (and others). The Petition merely questions whether the FCC struck the proper balance. It asks whether the Commission correctly evaluated the likely level of interference and, if so, whether the Commission instituted proper measures to protect against that interference. Because FiberTower's requests are reasonable and consistent with Commission precedents, its Petition For Reconsideration should be granted.

The following is a brief reply to certain points raised in the Opposition.

**1. SafeView's Waivered Device Presents A Substantially Greater Risk of Harm Than a Rule-Compliant, Non-Waivered Device**

As noted above, SafeView contends that the "fatal flaw" in FiberTower's Petition is the fact that, but for the waiver granted by the Commission, its device would comply with all of the Part 15 rules and, as a result, "[t]he waived device thus should be no more likely to cause harmful interference than a compliant device." Opposition at 4-5. SafeView argues that because FiberTower has not demonstrated that the SafeScout device will cause harmful interference, the measures that FiberTower proposes are unnecessary. FiberTower does not disagree that, but for the non-compliant aspects of the SafeView device for which it pursued a waiver, the device

would comply with the rules and not pose a threat of harmful interference. But a waiver was required, meaning that – unless the FCC’s rules are incorrect – the SafeView device is more likely to cause harmful interference than rule compliant devices. FiberTower’s Petition is based precisely on the very non-compliant aspects of the SafeView device that are assumed away in SafeView’s argument.

Despite SafeView’s attempt to obfuscate the issue of its “somewhat higher peak emissions,” Opposition at 4, the fact remains that the waived SafeView device will operate at double the level of peak emissions at which a rule-compliant device would operate. Section 15.35(b) of the Commission’s rules sets a peak emissions limit of 20 db above average emissions; the Order allows SafeView to radiate peak emissions that are 41 db above its average emissions limit. Unless the limit established by the Commission in section 15.35(b) is simply an arbitrary number, then doubling that limit certainly must be significant, and it presents a greatly increased danger of interference to nearby primary licensed uses.

## **2. Interference Testing is Reasonable and Necessary Under the Circumstances**

In its Petition, FiberTower suggested that the SafeView device—which has seen neither real-world operations nor any reported testing—should be subjected to pre-approval testing to determine the real-world effects of its waived operations on nearby licensed users such as FiberTower. This approach is consistent with numerous similar waiver requests. Petition at 5-7. Rather than offer an explanation of why testing would be unhelpful to the Commission or unduly burdensome for SafeView, the Opposition attempts to divert the FCC’s attention from this critical issue. According to the Opposition, FiberTower has posited a legal argument that all Part 15 devices must be tested for interference into specific licensed receivers; the Opposition then

argues that “[t]hat is not a correct statement of the law...Nowhere, however, do the rules require testing for non-interference into specific receivers.” Opposition at 5-6.

FiberTower agrees with SafeView’s interpretation of the Commission’s rules in this regard; FiberTower has never asserted that the Part 15 rules require such testing in the normal course. However, FiberTower correctly noted, citing the Commission’s reasoning in granting a number of past waivers of the Part 15 rules, that (1) the Commission has consistently taken testing data into account when analyzing requests for similar waivers in the past; (2) no testing data have been supplied in the present case; and (3) the Commission should reconsider granting the waiver without at least some test data to demonstrate that the SafeView device, which will radiate peak emissions at double the level allowed by the rules, will not cause substantial interference to nearby licensed users. Petition at 5-7. FiberTower’s request is modest and reasonable, is consistent with past Commission action, and provides a compelling reason why the Commission should reconsider its grant of the requested waiver in this case. Indeed, without the testing that FiberTower envisions, the FCC cannot possibly know if the restrictions it imposed are restrictive enough (or too restrictive).

### **3. SafeView is Required to Demonstrate that it has Considered Alternatives to a Rule Waiver Request**

SafeView argues that it is not required to demonstrate that “it has no alternative to the particular details of its operation – specifically, its choice of frequencies and construction materials.” Opposition at 7. SafeView’s position is contrary to both the precedent that FiberTower cited in its Petition and to logic. The Commission should not be required to consider requests for waiver of its rules unless the applicant makes a credible demonstration that there is no alternative but to ask for such a waiver. Such a demonstration might reasonably address why it is necessary to employ the target frequencies, the materials used, etc. Presumably, the FCC’s

rules are designed to serve and protect the public interest. Accordingly, compliance with the FCC's rules is preferred. An entity that cannot comply with the rules must demonstrate why it is not possible for it to do so. A reasonable component of that demonstration must be the rule-complaint alternatives that the entity considered. The FCC failed to require that SafeView make that reasonable demonstration in this instance.

SafeView also too narrowly interprets FiberTower's examples of how the FCC should have required SafeView to demonstrate that it considered all alternatives to a rule waiver. For instance, FiberTower stated that SafeView did not adequately demonstrate that its device incorporates all available measures to limit harmful interference to licensed operations and specifically mentioned the use of conductive coatings on windows. Petition at 8. In response, SafeView argued that tinting the windows of its device would impermissibly degrade its functionality. Opposition at 7. SafeView misses the point. The FCC did not require SafeView to demonstrate that it could employ any other interference mitigation techniques, and the Opposition confirms that SafeView did not consider any. While tinting the glass *on the SafeScout product* may cause degradation, for example, SafeView failed to consider, among other techniques, tinting windows in the airport *area* where Safeview proposes to operate. The Petition also specifically noted that the FCC failed to require that SafeView demonstrate that it considered operations in other bands, in light of evidence that similar devices operate on alternative spectrum. Petition at 7 and n.13. The Opposition also remains silent on this issue.

#### **4. SafeView Should be Required to Make its Locations Known to Other Licensed Operators**

The Order required SafeView to create and maintain a record of SafeView installations and to make that list available to the FCC and the National Telecommunications and Information

Administration (“NTIA”). As FiberTower explained in its Petition, this requirement will be nearly valueless to the very commercial operators of licensed spectrum who will be affected by any interference from the SafeView devices. Even assuming that FiberTower could obtain the information from the FCC or NTIA (no such mechanism is established in the Order for FiberTower to do so, and it is assumed that SafeView would object to the sharing of such information), whatever interference a SafeView device may cause could debilitate a FiberTower installation for a very long time while the information was requested from the FCC or NTIA.

Contrary to SafeView’s assertion, FiberTower’s Petition would not necessarily have SafeView’s location information made public. The Petition seeks some form of notice that will allow FiberTower to be aware of where SafeView devices will be installed. There is no reason why SafeView cannot provide notification to licensed users within a prescribed radius of the proposed site of the SafeScout device. There may likely be FiberTower facilities operating near installed SafeView devices, as FiberTower directly services Federal Aviation Administration (“FAA”) traffic at airports using multiple frequencies, including 24 GHz. In addition, it is likely that there will be heavy use of FiberTower’s 24 GHz spectrum for one of its primary purposes – backhaul of mobile wireless traffic – at and/or around airport locations.

**5. The Commission Should Require SafeView to Commit to Reasonable Interference Resolution Measures**

In its Petition, FiberTower requested that SafeView be required to commit to reasonable interference resolution measures. The need for such measures is particularly urgent considering that the SafeView device will be ubiquitously deployed in the same areas as FiberTower’s antennas with non-rule compliant power output and without (unless the Petition is granted) any real-world testing. SafeView’s opposition to these reasonable measures is not credible.

SafeView objects to FiberTower's request that a single point of contact be designated to receive interference complaints because it would be unreasonably expensive to "staff a contact point 24/7." Opposition at 9. But FiberTower's Petition makes no such request, and simply asks that a single point of contact be designated—that "point of contact" could just as easily be a cell phone number for an engineer employed by SafeView or by the operator of the SafeScout device. Asking SafeView to supply a phone number or E-mail address to which interference problems can be reported is perfectly reasonable in this context.

SafeView's further contention that FiberTower would have it "hand over control of its equipment" to other licensees is simple hyperbole, and clouds what is a simple issue. If SafeView will be allowed to install non-compliant unlicensed devices that radiate peak emissions at double the level allowed under the Part 15 Rules with no obligation to run any tests against nearby primary licensed operations, the very least that SafeView should be required to do is take immediate steps to correct such interference when it does inevitably occur. *See* Petition at 9-10.

**6. Conclusion**

For these reasons, FiberTower respectfully asks that its Petition be granted.

Respectfully submitted,

FIBERTOWER CORPORATION

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### CERTIFICATE OF SERVICE

I, Robert G. Kidwell, hereby certify that on this 22nd day of September, 2006, I served copies of the foregoing Reply on the FCC personnel listed below via E-mail, and upon the parties listed below via e-mail and regular mail, postage prepaid:

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